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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,978	11/25/2003	Alexander Bekker	PREDYN-44675	9035
26252	7590	10/02/2007	EXAMINER	
KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367				HOGE, GARY CHAPMAN
ART UNIT		PAPER NUMBER		
3611				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/722,978	BEKKER, ALEXANDER	
	Examiner Gary C. Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 July 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11, 16-34, 37-49, 52-61 and 87-94 is/are pending in the application.
- 4a) Of the above claim(s) 24-27, 38-41 and 59-61 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11, 16-23, 28-34, 37, 42-49, 52-58 and 87-94 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 24-27, 38-41 and 59-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 15, 2005.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 11, 16, 20, 21, 28-32, 37, 87-91 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDermott (3,965,589) in view of Tinklenberg et al. (3,965,589).

See Fig. 7. McDermott disclose an identification tag for attachment to the wrist of a human (the age of the wearer is irrelevant to the patentability of the tag), an elongated wristband 22, and related fastening means for configuring and retaining the wristband in a closed loop shape of selected circumferential size wrapped about a portion of the specific wearer or object.. However, the long dimension of the tag disclosed by McDermott extends parallel to the long dimension of the wristband. Tinklenberg discloses an identification tag system comprising a generally rectangular identification tag having a long dimension and a short dimension, the tag including a pair of slots 13, 14 therethrough and means for receiving information associated with a specific wearer or object. The identification tag 12 disclosed by Tinklenberg is mounted onto the exterior of the wristband and has a long dimension that is perpendicular to the long

dimension of the band to which it is attached. The simple substitution of the known tag attachment means taught by Tinklenberg for the one disclosed by McDermott would have been obvious to one having ordinary skill in the art at the time the invention was made in order to achieve the predictable result of holding and displaying the tag. Further, it is not known whether the tag and wristband disclosed by McDermott are elastomeric. Because it is within the level of ordinary skill of a worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and since a person having ordinary skill in the art would know that an elastomer would be suitable for the fabrication of a tag and a wristband, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the tag and wristband disclosed by McDermott from an elastomer as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

Regarding claims 5-7, 32 and 91, see Fig. 1 of Tinklenberg. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by McDermott with machine-readable indicia in addition to the human-readable indicia, as taught by Tinklenberg, in order to allow the tag to be read by a machine.

Regarding claim 20, it would have been obvious to include a plurality of tags on the wristband disclosed by McDermott because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 21, see column 7, lines 10-24 of McDermott.

Art Unit: 3611

4. Claims 8-10, 33, 34, 92 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDermott (3,965,589) in view of Tinklenberg et al. (3,965,589), as applied to claims 2 and 1, respectively, above, and further in view of Grose et al. (2002/0054940).

McDermott discloses the invention substantially as claimed, as set forth above. However, McDermott only discloses providing human-readable indicia. Grose teaches that it was known in the art to provide an identification tag with both human-readable indicia and an RFID chip. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by McDermott with an RFID chip, as taught by Grose, in order to allow the tag to be read by a machine.

Regarding claims 10, 34 and 93, Grose teaches that “the RFID tag 12 may be of any variety known to those skilled in the art, and is sized such that it may be embedded in the band 10” (paragraph [0039]).

5. Claims 17-19, 22, 23, 42-46, 49 and 52-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDermott (3,965,589) in view of Tinklenberg et al. (3,965,589) as applied to claim 1, above, and further in view of Duncan (6,058,637).

McDermott discloses the invention substantially as claimed, as set forth above. However, it is not known how the tags are formed. Duncan teaches that it was known in the art to form identification tags such that a plurality of them are detachably interconnected to each other, and to feed those tags through a printer (i.e., a processor station), to print information thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of the tags disclosed by McDermott, and to attach them detachably

together, as taught by Duncan, in order to enable efficient processing of multiple tags through a printer.

Regarding claims 19 and 56, a roll is a very long, very narrow sheet.

Regarding claims 23 and 58, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make some of the tags larger than the others because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 46, see Fig. 1 of Tinklenberg. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by McDermott with machine-readable indicia in addition to the human-readable indicia, as taught by Tinklenberg, in order to allow the tag to be read by a machine.

6. Claim 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDermott (3,965,589) in view of Tinklenberg et al. (3,965,589) and Duncan (6,058,637), as applied to claim 42, above, and further in view of Grose et al. (2002/0054940).

McDermott discloses the invention substantially as claimed, as set forth above. However, McDermott only discloses providing human-readable indicia. Grose teaches that it was known in the art to provide an identification tag with both human-readable indicia and an RFID chip. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by McDermott with an RFID chip, as taught by Grose, in order to allow the tag to be read by a machine.

Regarding claim 48, Grose teaches that “the RFID tag 12 may be of any variety known to those skilled in the art, and is sized such that it may be embedded in the band 10” (paragraph [0039]).

Regarding claim 54, see column 7, lines 10-24 of McDermott.

***Response to Arguments***

7. Applicant's arguments filed July 12, 2007 have been fully considered but they are not persuasive.

The recitation that the tag is designed for use with a “small diameter” closed loop wristband does not distinguish over the prior art because no frame of reference has been established as to what constitutes “small diameter.” The diameter of the wristband disclosed by McDermott is small compared to many things. However, even if that feature had been recited in such a way as to distinguish over the prior art (e.g., by reciting a specific diameter), it still would not be allowable because it is known in the art to provide wristbands for infants that are smaller than the wristbands used for adults. See, e.g., U.S. Pat. No. 5,479,797 to Peterson, column 5, lines 23-27.

Contrary to Applicant's assertion, Tinklenberg is not non-analogous art. Both McDermott and Tinklenberg are concerned with attaching an identification tag to a band.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3611

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

Art Unit: 3611

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary C Hoge/  
Primary Examiner  
Art Unit 3611

gch